IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 81 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORIENTAL INSURANCE CO.LTD.

Versus

CHAMPABEN PREMJIBHAI MAIR

Appearance:

1. First Appeal No. 81 of 2002

MR RK MISHRA for Appellant

..... for Respondents No. 1-3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 18/01/2002

ORAL JUDGEMENT

By filing this Appeal under Section 173 of the Motor Vehicles Act, 1988, appellant-United India

Insurance Co. Ltd. has brought under challenge the order dated August 29, 2001 recorded below exhibit-5 in MACP No. 517 of 2001 by the Motor Accident Claims Tribunal (Main), Bhavnagar by which appellant is directed to pay Rs.25,000/- jointly and severally alongwith running interest @ 9% per annum from the date of the application till realisation within one month from the date of the order by way of compensation under 'No Fault Liability' principle envisaged under Section 140 of the Motor Vehicles Act.

2. I have heard Mr. R.K.Mishra, learned advocate for the appellant. I have perused the averments made in the memo of appeal, grounds set out therein and also the impugned order. Obviously this order is in the nature of an interim order, which is subject to adjustment against the final award which may be passed in the main MACP No. 517 of 2001 which is still pending before the MACT (Main) Bhavnagar. This principle is established by the Supreme Court in the case of THE ORIENTAL INSURANCE CO. LTD. V. HANSRAJBHAI V KOTADIA, 2001(4)JT 477.

3. In view of the aforesaid state of affairs, I see no reason to interfere with the impugned order at this stage by admitting the appeal. However, with a view to safeguard the interest of the appellant-Insurance Company, an undertaking of the original claimant is required to be obtained so that the original claimant shall not abandon the main claim petition with a view to fritter away the amount of compensation of Rs.25,000/and interest thereon which is awarded in favour of the claimant and which is obviously required to be disbursed in his favour.

4. In this view of the matter, it is directed that the original claimant shall file a solemn undertaking before the Tribunal within a period of four weeks of the service of this order to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause and that the claimant shall obtain a decision on merit in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition. On the aforesaid undertaking being filed by the claimant, the amount under the impugned order may be withdrawn by the original claimant on furnishing security to the satisfaction of the Tribunal.

5. Subject to the aforesaid observations and directions, the appeal is dismissed at the inception with

no order as to costs.

6. The amount deposited in the appeal, if any, with the registry is directed to be transmitted to the Tribunal forthwith. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*